

(2005) 05 AHC CK 0296

Allahabad High Court

Case No: IT Ref. No. 70 of 1986

Commissioner of Income Tax

APPELLANT

Vs

Adarsh Cold Storage

RESPONDENT

Date of Decision: May 3, 2005**Acts Referred:**

- Income Tax Act, 1961 - Section 256(1), 80J, 80J(1), 80J(4)

Citation: (2005) 199 CTR 374 : (2006) 280 ITR 58 : (2005) 149 TAXMAN 176**Hon'ble Judges:** Rajes Kumar, J; R.K. Agrawal, J**Bench:** Division Bench**Advocate:** A.N. Mahajan, for the Appellant; R.S. Agrawal, for the Respondent

Judgement

1. The Tribunal, New Delhi, has referred the following question of law u/s 256(1) of the IT Act, 1961 (hereinafter referred to as "the Act"), for opinion of this Court :

"Whether the learned Tribunal was justified in law in allowing the benefit of deduction u/s 80J to the assessee for the asst. yr. 1978-79 ?"

2. The present reference relates to the asst. yr. 1979-80.

3. Briefly stated, the facts giving rise of the present reference are as follows :

The applicant is running a cold storage in Budaun. Originally, the cold storage was built in 1967 or 1968. After this, an additional chamber was completed during the period 1977-78 and 1978-79. This chamber had been constructed inside the same boundary wall. The assessee claimed relief u/s 80J on the capital employed in this new chamber. The ITO found that this was merely an expansion of the existing cold storage and it had common potato drying shed, tool room, water tank, etc. He also held that the same employees looked after both the chambers, and no new power connection had been taken for the new chamber. The ITO was of the view that there was no independent viable unit which had come into existence and the assessee would, therefore, not be given benefit u/s 80J. In this connection, the ITO referred to

the decision of the Hon'ble Supreme Court in the case of [Textile Machinery Corporation Limited, Calcutta Vs. The Commissioner of Income Tax, West Bengal](#), and also some instructions of the Board. He also referred to some decision of the Tribunal in the case of G.T. Cold Storage & Ice Factory. He, therefore, denied the claim of the assessee u/s 80J.

When the matter came before the CIT(A), he found that additional staff had been engaged in new chamber and additional connection had also been taken when the new chamber was put into operation. Before the CIT(A), reliance was placed on the judgment of the Calcutta High Court in the case of CIT v. Harinkhola Ice & Cold Storage Ltd. The CIT(A) found that the new chamber could be considered as a new industrial unit which was viable. According to him, the fact that both the chambers were situated inside the boundary could not change the position. According to the learned CIT(A), the real test was whether the new unit is capable of functioning by itself or did it require the functioning of the earlier unit before it could function. The CIT(A) gave a finding that the new chamber was in position to function independently even if the older chamber was closed and was not functioning. He, therefore, allowed the benefit u/s 80J to the assessee.

Revenue preferred the appeal before the Tribunal. Tribunal has upheld the order passed by the CIT(A) on the following grounds :

"We have considered the facts of the case. The question of new industrial undertaking and its reconstruction for the purpose of grant of deduction u/s 80J had been considered by the Supreme Court in the case of Textile Machinery Corporation v. CIT (supra). In that case also new units of foundry and jute mill had been constructed and the exemption had been denied. The Supreme Court held that for the reconstruction of existing business there must be transfer of all the assets of the existing business to the new industrial undertaking. A new activity launched by the assessee by establishing new plants and machineries by investing substantial funds which produce the same commodity and that does not come in the way of the unit getting an exemption. What was required was that the new undertaking must be an integrated unit by itself wherein articles are produced and, wherever required, requisite number of persons are working. On the facts of that case it was held that it was not a reconstruction of old business and the benefit allowable to the assessee.

In the case of CIT v. Harinkhola Ice & Cold Storage Ltd. it was held that the purpose of Section 80J was to encourage new industrial undertaking in respect of separate and distinct undertakings. In that case separate books of account were not maintained but the High Court did not consider it to be necessary. Some old machinery was also being used but that was also found to be small. The High Court held that where the unit was viable the benefit u/s 80J could be allowed. The finding of the CIT(A) that the new chamber could function independently has not been rebutted before us. The finding in the case of another cold storage would not apply as there it was found that there was no additional staff and there was no separate

electricity connection and the new units were independent of the working of the old unit. As in the present case, the new unit was in a position to function independently with the help of separate staff and additional power connection, the benefit u/s 80J is allowable to the assessee. The facts, in the present case are distinguishable from the facts as considered by the Tribunal in the case of G.T. Cold Storage & Ice Factory (ITA No. 4541 of 1979, Delhi Bench, dt. 22nd April, 1981) and we, therefore, hold that the CIT(A) was justified in extending the benefit u/s 80J to the new chamber constructed by the assessee."

4. We have heard Sri A.N. Mahajan, learned standing counsel for the Revenue, and Sri R.S. Agrawal, learned counsel for the assessee-respondent. Relying upon the decision of this Court in the case of G.T. Cold Storage & Ice Factory v. CIT 2004 UPTC 1287, learned standing counsel submitted that deduction u/s 80J of the Act is not admissible to a cold storage. The submission is misconceived.

5. Under the proviso to Sub-section (1) of Section 80J deduction is admissible to a cold storage plant or plants, which starts operating after 31st March, 1976. Thus, where a new chamber has been completed and it functions independently and starts its operation after 31st March, 1976 deduction u/s 80J of the Act is admissible. Tribunal has categorically recorded a finding of fact that the new unit was in a position to function independently with the help of separate staff and additional power connection, the benefit of Section 80J is admissible. Decision in the case of G.T. Cold Storage & Ice Factory v. CIT (supra), relied upon by the learned standing counsel would not be applicable in the present case, inasmuch as in that case, Tribunal has recorded a categorical finding of fact that the said cold storage has not been able to fulfil the conditions of Clauses (iii) and (iv) of Section 80J(4) of the Act. Since in the present case, new unit can function independently, Tribunal is justified in holding that benefit u/s 80J of the Act is admissible.

6. Respectfully following the aforesaid decision (sic), we answer the question referred to us in the affirmative, i.e., in favour of assessee and against the Revenue.